IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.284 of 1997
and
W.M.P.Nos.411 and 12166 of 1997

1. Tamil Nadu National Mine
workers Union
rep. by its General Secretary
57-C, Court Street
Ariyalur-621 704.

2. Thozhilalar Munnetra Sangam
Thiruvalluvar Mavattam
Tamil Nadu Kanima Niruvanam
rep. by its Secretary
Kattupriyangiam, Asthinapuram P.O.
Ariyalur. .. Petitioners

-Vs-

1. Tamil Nadu Minerals Ltd.
Rep. by its Chairman &
Managing Director
TWAD Board Building
Chepauk, Madras-600 005.

2. Divisional Manager
Tamil Nadu Minerals Ltd.
Ariyalur-621 713. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution praying for the issue of writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.Govardan

For respondents : Mr.Arul Murugan
for M/s.Muthumani Doraisami
:ORDER

The petitioners are twenty workers, who are working in Periyanagalur quarry under the first respondent, a State owned company, located in Ariyalur, which was established in the year 1979, by the first respondent-company.

2. Even though the petitioners were initially appointed as temporary workers, their services were subsequently regularised and they were permanently absorbed as Last Grade employees in the year 1992 and were paid minimum wages as contemplated under the Minimum Wages Act.

3. Taking note of the situation that the workers have been overstaffed at Periyanagalur, Ariyalur Division, and with a view to avoid the consequential retrenchment, the Management of the respondentcompany thought it fit to transfer the petitioners to the quarry at Thogaimalai, at Karur Division. Accordingly, by order dated 3.1.1997, the petitioners were transferred from Periyanagalur, Ariyalur Division, to the mining quarry at Thogaimalai at Karur Division. Aggrieved by the same, the petitioners seek the issue of a writ of Certiorarified Mandamus, calling for the records from the respondents, to quash the impugned order of transfer bearing Ref.No.Na.Ka. 6949/A2/97 dated 3.1.19 97.

4.1. Mr.Govardan, learned counsel appearing for the petitioners, is not disputing the powers of the first respondent-company to pass the impugned order of transfer, which is provided under Clause 13 of the Standing Orders of the first respondent-com and certified by the Government, as contemplated under Section 5(2) and (3) of the Industrial Employment (Standing Orders) Act, 1946, which read as follows:
" Clause 13:
Transfer from one establishment to the other establishment: All workmen are liable for transfer from one type of work to the other type, one pit to the other, one face to the other, one establishment to the other as per exigencies of work without prejudice to their service conditions. Refusal to obey such posting orders will be treated as misconduct liable for severe disciplinary action, leading to termination of services.

4.2. However, the only grievance of the petitioners is that the very establishment of the quarry at Periyanagalur, Ariyalur Division was intended to provide employment to the villagers in and around Periyanagalur, Ariyalur Division, and therefore, the impugned transfer would defeat the said object.

4.3. The learned counsel for the petitioner further argues that the reason given by the first respondent company to support of the impugned order of transfer dated 3.1.1997 that the mining quarry at Periyanagalur, Ariyalur Division, is over-staffed by the workers, is not tenable, as the first respondent has acquired another 48 acres of land for the extension of mining operations at Periyanagalur.

4.4. Finally, it is contended by the learned counsel for the petitioner that the impugned order of transfer, if given effect to, it may not be possible for the petitioners, who are poor workers, to have two establishments, one at Periyanagalur, Ariyalur, where their family had already got settled, and the other at Thogaimalai, Karur.

5.1. Per contra, Mr.Arul Murugan, learned counsel appearing for the respondent-company, contends that the petitioners are not questioning the powers of the first respondent-company to pass the impugned order of transfer.

He further contends that the respondent-company is inclined to exercise such power in the interest of the administration, and more particularly, in the interest of the petitioners-workmen themselves, as the mining quarry at Periyanagalur, Ariyalur Division, is over-staffed, and in order to avoid any retrenchment of the excessive workers, the impugned transfer is inevitable.

5.2. It is further contended by the learned counsel for the respondent-company that the impugned order of transfer, will not, in any way, affect any of the conditions of service of the petitioners, and therefore, the petitioners are not prejudiced by the impugned order of transfer, as Thogaimalai is located only 100 kilometres away from Periyanagalur.

5.3. The learned counsel for the respondent-company, in any event, contends that when an order was passed on administrative reasons and also to prevent any retrenchment of service of the petitioners, the grievance of the petitioners that they would be compelled to have two establishments in view of the impugned order, one at Periyanagalur at Ariyalur and the other at Thogaimalai at Karur, is not sustainable in law.

6. I have given careful consideration to the submissions of both sides.

7.1. Concededly, the impugned order dated 3.1.1997 is an order of transfer simplicitor made on administrative grounds and the first respondent-company is empowered to pass such an order as per Clause 13 of the Standing Orders of the respondent-Company. Once the impugned order of transfer is not questionable for lack of powers, it may not be proper for this Court to interfere with the same, unless it is challenged on the ground of mala fide and arbitrariness.

7.2. The submission of the learned counsel for the petitioners that the respondent-company has acquired 48 acres of land for the extension of mining operations at Periyanagalur, Ariyalur Division, may not be a ground to test the reason given by the first respondent company that the mining quarry at Periyanagalur, Ariyalur Division, is overstaffed.

7.3. The other grievance of the petitioners that they would be compelled to maintain two establishments, one at Periyanagalur, Ariyalur, and the other at Thogaimalai, Karur, does not weigh the reasons of this Court, as the first respondent-company is entitled to exercise its powers under Clause 13 of the Standing Orders of the first respondent-company on administrative reasons, if the same is required, in the interest of the administration of the company. Therefore, when such an order was made, particularly in order to avoid any retrenchment of the petitioners, no mala fide or arbitrariness could be alleged against the first respondent-company in passing the impugned order of transfer.

For all these reasons, finding no merits in this writ petition, the same is dismissed. No costs. Consequently, W.M.P.Nos.411 and 12166 of 1997 are also dismissed. However, taking into consideration, the time ran over

since the date of the transfer order, it is for the first respondent company to decide whether to give effect to the transfer at this point of time.

Index: Yes
Internet: Yes

Ksv/sasi

To:

1. Tamil Nadu Minerals Ltd.
Rep. by its Chairman &
Managing Director
TWAD Board Building
Chepauk, Madras-600 005.

2. Divisional Manager
Tamil Nadu Minerals Ltd.
Ariyalur-621 713.